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December 2020

### Administrative Appeal Decision - Klementiev, Oleg (2019-06-21)

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STATE OF NEW YORK – BOARD OF PAROLE

**ADMINISTRATIVE APPEAL DECISION NOTICE**

Name: Klementiev, Oleg

Facility: Greene CF

NYSID: [REDACTED]

Appeal  
Control No.: 10-148-18 B

DIN: 02-A-0921

Appearances: Cheryl Kates Esq.  
P.O. Box 734  
Fairport, New York 14450

Decision appealed: October 2018 decision, denying discretionary release and imposing a hold of 24 months.

Board Member(s)  
who participated: Cruse, Demosthenes

Papers considered: Appellant's Letter-brief received March 6, 2019

Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

Final Determination: The undersigned determine that the decision appealed is hereby:

 ☐ Affirmed ☒ Vacated, remanded for de novo interview ☐ Modified to \_\_\_\_\_

Commissioner

 ☐ Affirmed ☒ Vacated, remanded for de novo interview ☐ Modified to \_\_\_\_\_

Commissioner

 ☐ Affirmed ☒ Vacated, remanded for de novo interview ☐ Modified to \_\_\_\_\_

Commissioner

**If the Final Determination is at variance with Findings and Recommendation of Appeals Unit, written reasons for the Parole Board's determination must be annexed hereto.**

This Final Determination, the related Statement of the Appeals Unit's Findings and the separate findings of the Parole Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 6/21/19.  
LB

Distribution: Appeals Unit – Appellant - Appellant's Counsel - Inst. Parole File - Central File  
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Klementiev, Oleg

**DIN:** 02-A-0921

**Facility:** Greene CF

**AC No.:** 10-148-18 B

**Findings:** (Page 1 of 1)

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Appellant challenges the October 2018 determination of the Board, denying release and imposing a 24-month hold. The instant offense consisted of the appellant, who at the time was an illegal alien, stabbing the victim to death. Appellant raises the following issues: 1) the decision is arbitrary and capricious, and irrational bordering on impropriety, in that the Board failed to consider and/or properly weigh the required statutory factors. 2) as the appellant was only 17 years old when he committed this offense, the Board was required to, but did not, consider youth and its attendant circumstances in relationship to the commission of the crime. 3) the Board never sought a letter from the former criminal defense lawyer. 4) the Board ignored and did not discuss his deportation order and/or CPDO status. 5) the Board failed to give him a Russian language interpreter. 6) the Commissioners injected their personal opinion into the case. 7) the Board decision lacks details. 8) the sentencing minutes are never discussed or mentioned. 9) the Board decision resentenced him to life without parole. 10) the Board stating appellant should be writing a letter to the apology bank is illegal. 11) the decision was predetermined. 12) the 24 month hold is excessive.

Only one issue needs to be discussed. Appellant was 17 years old when he committed this murder, and his ME date is life. In Hawkins, the Third Department held that “[f]or those persons convicted of crimes committed as juveniles [ie, 17 and under] who, but for a favorable parole determination will be punished by life in prison, the Board must consider youth and its attendant characteristics in relationship to the commission of the crime at issue.” Matter of Hawkins v. New York State Dep’t of Corr. & Cmty. Supervision, 140 A.D.3d 34, 39, 30 N.Y.S.3d 397, 400 (3d Dept. 2016), aff’d in part 51 Misc. 3d 1218(A) (Sup. Ct. Sullivan Co. 2015). After Hawkins, the Board revised its regulations governing parole determinations for minor offenders to require that the Board “consider . . . the diminished culpability of youth,” and “growth and maturity” since the time of the offense. 9 N.Y.C.R.R. § 8002.2(c).

Per the transcript, other than mentioning his age, there is virtually no discussion, let alone a detailed one, of what is required in this type of case. Nor does the Board decision contain what is required as well. Accordingly, a *de novo* interview is appropriate. In addition to other required factors, the new panel shall discuss with Appellant and consider: (i) the diminished culpability of youth, and (ii) growth and maturity since the time of the offense.

**Recommendation:** Vacate and remand for de novo interview.